



No. 1003

In the Supreme Court of the United States

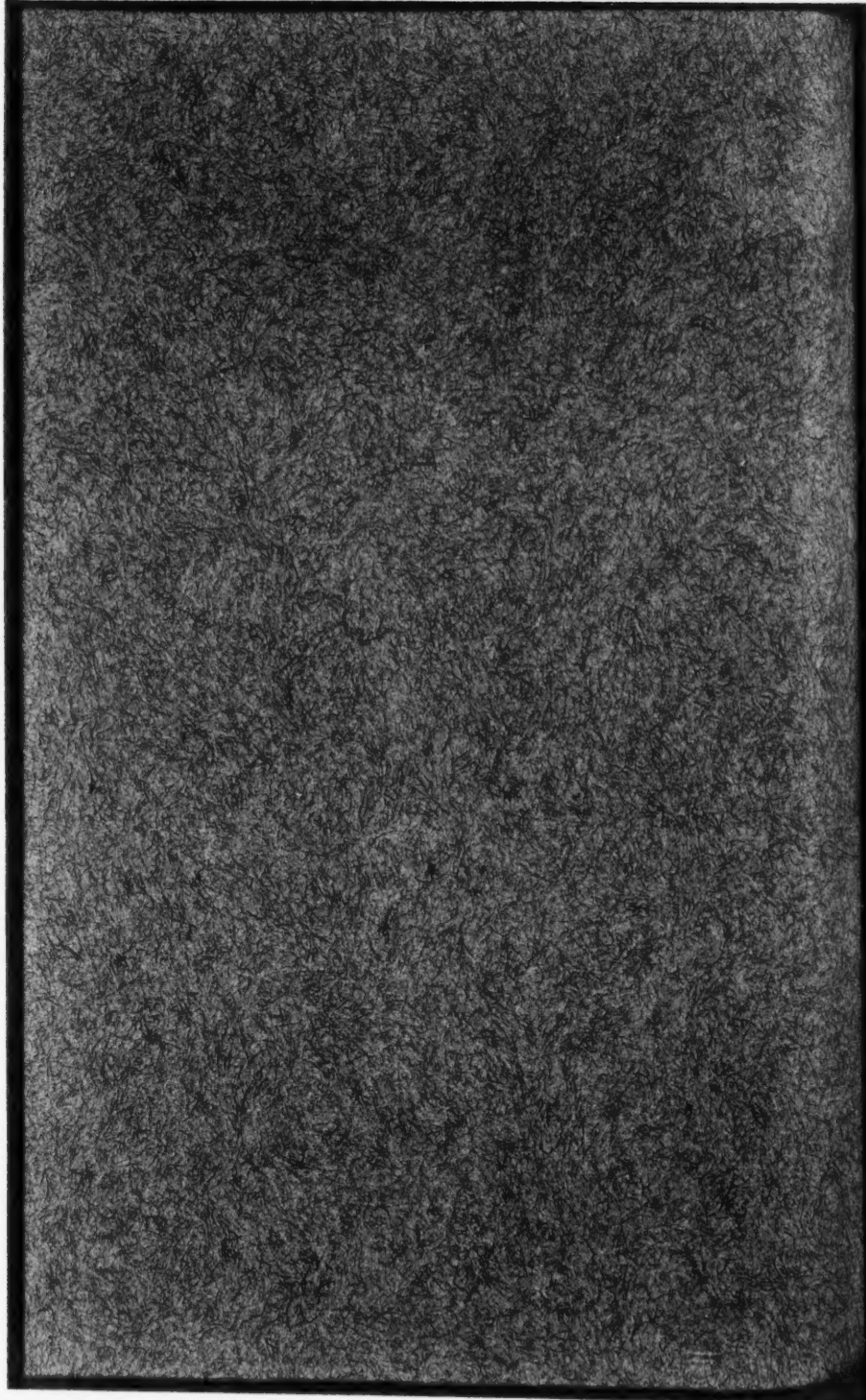
October Term, 1964

RONALD L. DICK AND GEORGE FRANKLIN DICK, Petitioners,
v.
THE WASHINGTON POST, Respondent.

Case No. 1003

ON PETITION FOR WRIT OF HABEAS CORPUS AND WRIT OF HABEAS AD TESTAM

FILED FOR THE PETITIONER'S RECORD



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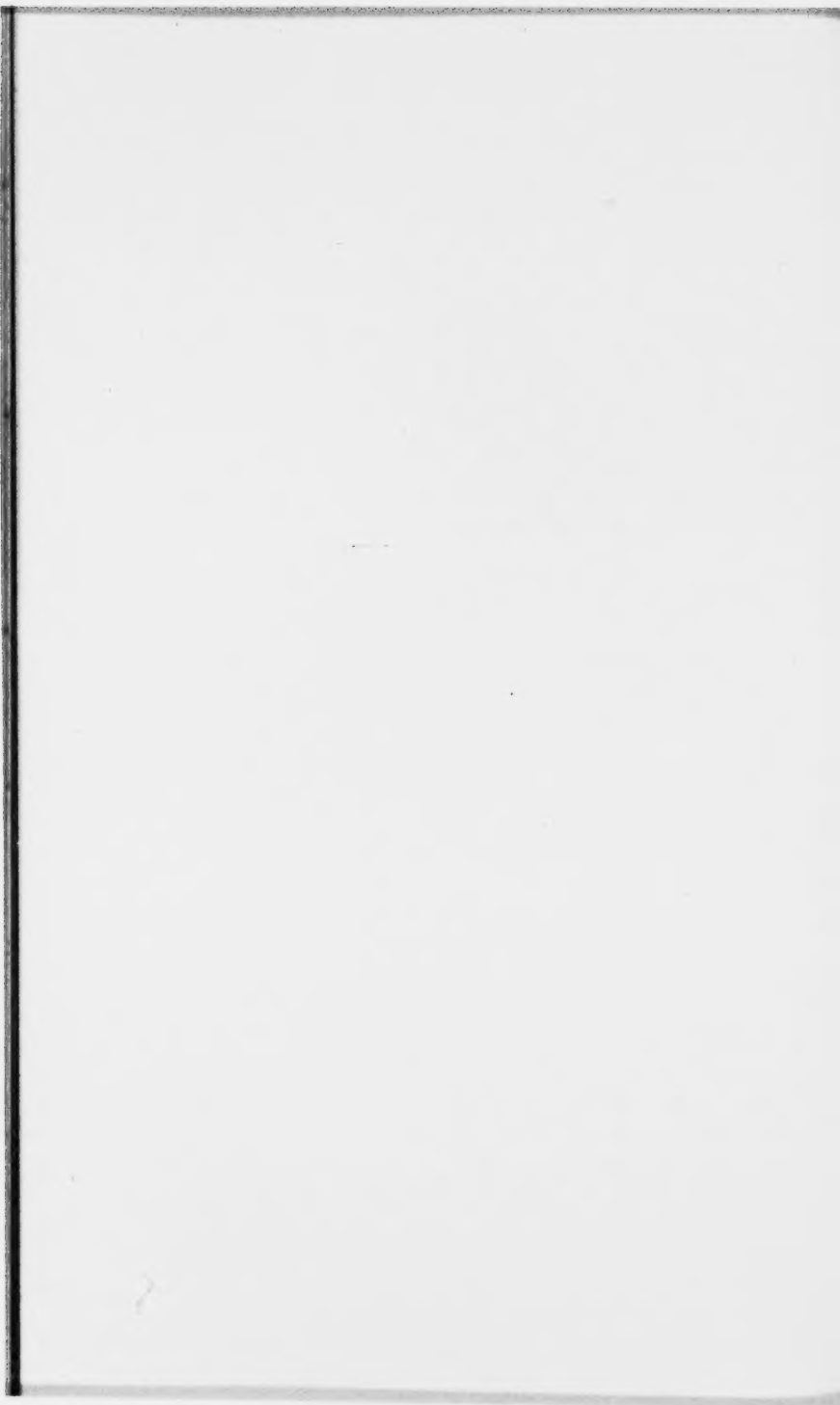
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(1)



In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 808

RONALD L. TREE AND NANCY PERKINS FIELD TREE,
HIS WIFE, PETITIONERS

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT
OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court below (R. 25-29) is reported in 55 F. Supp. 438.

JURISDICTION

The judgment of the Court of Claims was entered October 2, 1944. (R. 30.) The petition for a writ of certiorari was filed January 2, 1945. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

(1)

QUESTION PRESENTED

One of the petitioners herein contended in a court proceeding that she was entitled to dower in real property held under a trust of which her deceased husband was a beneficiary, and the other party in interest agreed that her claim should be allowed. The question involved is whether an amount paid to her out of the income of the trust in accordance with a court decree directing that the amount be paid "wholly" out of income constitutes taxable income to her under the provisions of Section 162 (b) of the Revenue Act of 1928.

STATUTE INVOLVED

Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 22. GROSS INCOME.

(a) *General definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

(b) *Exclusions from gross income.*—The following items shall not be included in

gross income and shall be exempt from taxation under this title:

* * * * *

(3) *Gifts, bequests, and devises.*—The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income);

* * * * *

SEC. 162. NET INCOME.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * *

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this section in the same or any succeeding taxable year;

* * * * *

STATEMENT

The special findings of fact of the Court of Claims (R. 9-25) may be summarized as follows:

Petitioners, Ronald L. Tree and Nancy Perkins Field Tree, are husband and wife. Nancy Perkins Field Tree was born September 10, 1897. On February 7, 1917, she married Henry Field, who died July 8, 1917, without issue. She later married Ronald L. Tree, one of the petitioners. (R. 9.)

Henry Field and his brother, Marshall Field III, were two of the surviving grandsons of Marshall Field, who died on January 16, 1906. These two grandsons were the beneficiaries mentioned in the twentieth article of the will of Marshall Field. By this article of the will, Marshall Field left the residue of his estate in trust for the two grandsons, Marshall, who received a three-fifths portion, and Henry, a two-fifths portion. Portions of the income were to be paid to the grandsons, the amounts to be increased as they grew older; and when Marshall reached the age of fifty the trust estate was to be distributed to Marshall and Henry, three-fifths and two-fifths respectively. (R. 9-10.)

This twentieth article of the will further provided that if either of the grandsons should die before the distribution of the corpus, without leaving issue, the entire trust estate was to go to the other grandson and to his issue. (R. 10.)

After Henry's death the trustees filed in the proper court a bill asking the court to enter a decree as to the correct method of computing the net income derived in each year from the trust estate. Marshall Field III filed a cross-bill asking that the court direct the trustees to pay over to him free of any trust all or part of the trust estate. (R. 11.)

Nancy Perkins Field, later Nancy Perkins Field Tree, who had been made one of the parties defendant by the cross-bill of Marshall Field III, filed an answer to the cross-bill in which she claimed a dower interest in two-fifths of the realty held by the trustees during the period of her marriage to Henry Field and in the proceeds of any such realty as might have been sold. (R. 11-12.)

The court on July 13, 1920, entered a decree stating, *inter alia*, that since Marshall Field III, the only beneficiary who would be affected by the claim for dower so long as the income from Henry's two fifths share was payable to him, had stated that he did not oppose the claim, it found in favor of the allowance of the claim. (R. 12-14.) As a result of this decree the court entered an order which provided with respect to the allowance for dower in part as follows (R. 14-15):

(n) That as against Marshall Field III and all parties claiming an interest in the residuary estate through or under him Nancy Perkins Field, the widow of Henry

Field, is entitled to dower in an undivided two-fifths ($\frac{2}{5}$ ths) part of any and all real estate now held in fee by the Trustees under Article Twentieth of the will of Marshall Field, deceased, which was acquired by them before Henry Field's death, and also in two-fifths ($\frac{2}{5}$ ths) of the proceeds of any such real estate so held by the said Trustees in fee at any time during the continuance of said marriage which has been sold or transferred by the said Trustees either before or after the death of said Henry Field. * * * and the court further adjudges and decrees that after the division of the residuary estate as in this decree provided, the amount payable to the said Nancy Perkins Field for her said dower shall be paid by the said Trustees wholly out of the income of Henry Field's share (or two-fifths) of the said residuary estate, and that Marshall Field III's share (or three-fifths) of the residuary estate shall be held by the Trustees, free from any dower rights of the said Nancy Perkins Field.

The foregoing adjudication as to the dower rights of said Nancy Perkins Field shall not so long as the income of said two-fifths share is payable to, or subject to the disposition of Marshall Field III under the provisions of said will and of this decree, bind any party to this cause other than said Trustees, Marshall Field III, and those claiming an interest in the residuary

estate through or under said Marshall Field III. * * *.

Sometime prior to July 13, 1920, the date of the decree and order, Nancy Perkins Field Tree, hereinafter referred to as Nancy Tree, and Marshall Field III entered into a written agreement which was subsequently dated July 14, 1920, and delivered to the trustees under the twentieth article of the will of Marshall Field. That agreement, after referring to the pending proceeding and to the fact that Nancy Tree was claiming a dower interest in the residuary estate held by the trustees under the twentieth article of Marshall Field's will, stated that, since a serious question existed as to whether the claim for dower could be maintained and since the parties were desirous of settling the claim, it was agreed between them that a decree might be entered sustaining Nancy Tree's claim for dower as against Marshall Field III, and that the amount payable to Nancy Tree in satisfaction of her right of dower was fixed at \$75,000 per year. This amount was later changed by agreement to \$85,000 per year. (R. 16-17.) The trustees were thereafter notified by Nancy Tree and Marshall Field III that they had agreed that \$85,000 per year should be paid to Nancy Tree. (R. 17-18.)

During each of the years from 1921 to and including the year 1931, the trustees paid to Nancy Tree the amount of \$85,000 specified in the agreement. One-third of two-fifths of the annual net

income from the real estate held by the trustees during the period of Nancy Tree's marriage to Henry Field and which was still held during the years 1930 and 1931, not including income from the proceeds of such real estate as might have been sold, amounted to \$269,635.18 and \$219,864.43 for the years 1930 and 1931, respectively. (R. 18-19.)

For the calendar years 1930 and 1931 the petitioners filed joint income tax returns. The return for 1930 did not include any part of the amount of \$85,000 received by Nancy Tree in that year from the trustees under the will of Marshall Field. (R. 20.) For the year 1931 the return included \$9,797.91 of the amount of \$85,000 received by Nancy Tree during 1931 from the trustees under the will of Marshall Field. (R. 21.)

Additional assessments of income taxes for the years 1930 and 1931 were made by the Commissioner of Internal Revenue. In making these assessments the Commissioner included the total amounts received by Nancy Tree from the trustees during those years in her gross income. The deficiencies so asserted were duly paid with interest. (R. 21-22.) Claims for refund¹ were later filed alleging that no part of the amounts

¹ The Government contended in the court below that no timely claim for refund for 1930 was filed; that the claim filed in 1938 was filed after the statutory period for filing claims had expired and this suit could not be maintained for that year. The court, however, did not find it necessary to decide this question, since it held that the petitioners were not

of \$85,000 received in each year constituted taxable income. (R. 23-24.)

The Court of Claims in its opinion (R. 25-29) held that the amounts of \$85,000 paid in 1930 and 1931, respectively, constituted taxable income to Nancy Tree in their entirety. Judgment was entered for petitioners in the amount of \$8,983.43 upon an issue which is not involved in this petition for certiorari. (R. 30.)

ARGUMENT

The decision of the court below that the amounts paid to Nancy Tree by the trustees under the will of Marshall Field constitute taxable income to her is correct and is in accordance with the decision of this Court in *Helvering v. Butterworth*, 290 U. S. 365. The amounts paid to Nancy Tree by the trustees in 1930 and 1931 were out of trust income. The court decree ordered the trustees to pay the amounts to Nancy Tree "wholly out of the income" of the trust property. (R. 15.) This decree was certainly binding upon the trustees regardless of any collateral agreement made between Nancy Tree and Marshall Field III. The agreement, moreover, referred to the decree and it would seem that the two should be considered together and that the agreement simply fixed the amount to be paid by the trustees out of the income entitled to any refund for the year 1930. In the event certiorari is granted, we intend to press this defense, but we believe it unnecessary to set forth the record facts in relation thereto (R. 23-24) in this brief.

come. The Board of Tax Appeals held in the case of *Continental Illinois Nat. Bank & Trust Co., Trustee v. Commissioner*, 40 B. T. A. 25, a proceeding brought by the trustees under the will of Marshall Field involving the identical payments for 1930 and 1931 which are in controversy here, that the trustees were entitled to deduct the amounts so paid as income to be distributed currently by the fiduciary to a beneficiary under the provisions of Section 162 (b) of the Revenue Act of 1928, *supra*. The decision of the court below is in accord with that decision. This Court in the *Butterworth* case, *supra*, involving the same provisions of the Revenue Act, held that a widow under a will who elects to take the income from a trust fund in lieu of dower becomes a beneficiary within the ambit of that section and is taxable on the income paid to her by the trustee. In *Helvering v. Pardee*, decided with the *Butterworth* case, at pages 370 and 371, this Court, applying *Burnet v. Whitehouse*, 283 U. S. 148, held on the other hand that where a widow under a will was given an annuity of a certain amount which was payable at all events and did not depend upon income from the trust estate, the widow was in the position of an ordinary legatee and that amounts paid to her were not distributions of income but were in discharge of a gift or legacy. The test is therefore whether the amounts are to be paid wholly out of income or whether in event the income is insufficient they become a charge upon the

corpus of the estate. There is no dispute in this case that the amounts were paid to Nancy Tree out of the income of the trust and it is clear that the trustees had absolutely no power to invade or use the corpus of the trust for this purpose. It is unnecessary to speculate as to what would happen if the trust income were insufficient to pay the \$85,000 per year or whether in such event Marshall Field III would be bound to make up the deficit.

There is no conflict with the decision in *Lyeth v. Hoey*, 305 U. S. 188, for the question involved is entirely different. In that case an heir who had been left out of a will sued to contest the will and the suit was compromised. The question was whether the property received by the heir was an inheritance or went to him by virtue of the compromise agreement, the state law being to the effect that rights so received were contractual and not testamentary. This Court held that the heir received the property by inheritance for Federal revenue act purposes and its receipt was therefore not subject to the income tax. The property there was part of the corpus of the residuary estate and there was no trust income involved.

Even if an assignment of income be deemed to have been made by Marshall Field III in his agreement with Nancy Tree, the decision of this Court in *Blair v. Commissioner*, 300 U. S. 5, sustains the decision below. In that case it was held that a primary beneficiary under a trust entitled

to the income for life could transfer a part or all of his interest and that the transferee became the owner of the specified interest and was taxable upon the income from it. Cf. *Pearce v. Commissioner*, 315 U. S. 543, in which a husband, having agreed in a separation agreement to make monthly payments to his wife, purchased an annuity of \$500 a month for her. This Court held that the monthly payments were income taxable to the wife rather than to the husband, citing the Blair case. By virtue of either the court decree or the agreement Nancy Tree clearly became the equitable owner of an interest in the trust necessary to produce an income of \$85,000 per year and is taxable upon the income.

CONCLUSION

No conflict has been shown. The decision of the court below is clearly correct and the petition should be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

SAMUEL O. CLARK, Jr.,
Assistant Attorney General.

SEWALL KEY,

ROBERT N. ANDERSON,

ELIZABETH B. DAVIS,

Special Assistants to the Attorney General.

FEBRUARY 1945.

